

103^D CONGRESS
1ST SESSION

H. R. 1402

To amend the Tariff Act of 1930 to provide effective trade remedies under the countervailing and antidumping duty laws against foreign-built ships that are subsidized or dumped and to provide otherwise for fair trade for the United States shipbuilding and repair industry.

IN THE HOUSE OF REPRESENTATIVES

MARCH 18, 1993

Mr. GIBBONS (for himself, Mr. STUDDS, Mr. LIPINSKI, Mr. BATEMAN, Mr. CARDIN, Mr. PAYNE of Virginia, Mr. KOPETSKI, Mr. JEFFERSON, Mr. PICKETT, Mr. ANDREWS of Maine, Mr. GENE GREEN of Texas, Mr. TAUZIN, Mrs. BENTLEY, Mr. MURPHY, Mr. FILNER, Mrs. THURMAN, Ms. SNOWE, Mr. HUNTER, Mr. MURTHA, Mr. REED, Mr. LIVINGSTON, Mr. GOODLING, and Mr. TORRICELLI) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Tariff Act of 1930 to provide effective trade remedies under the countervailing and antidumping duty laws against foreign-built ships that are subsidized or dumped and to provide otherwise for fair trade for the United States shipbuilding and repair industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **TITLE I—TREATMENT OF VES-**
2 **SELS UNDER THE COUNTER-**
3 **VAILING AND ANTIDUMPING**
4 **DUTY LAWS**

5 **SEC. 101. AMENDMENT TO TITLE VII OF THE TARIFF ACT**
6 **OF 1930.**

7 (a) IN GENERAL.—Subtitle D of title VII of the Tar-
8 iff Act of 1930 is amended by adding after section 771B
9 the following new section:

10 **“SEC. 771C. SPECIAL RULES IN APPLYING TITLE TO FOR-**
11 **EIGN-MADE VESSELS.**

12 “(a) DEFINITION.—The term ‘vessel’ means any ves-
13 sel of a kind described in heading 8901, 8902.00.00, or
14 8906 (other than a warship) of the Harmonized Tariff
15 Schedule of the United States of not less than 100 gross
16 tons, as measured under the International Convention on
17 Tonnage Measurement of Ships, 1969.

18 “(b) VESSELS CONSIDERED AS MERCHANDISE.—
19 Notwithstanding any other provision of law, a vessel is
20 merchandise for purposes of this title and shall be subject
21 to antidumping or countervailing duties if an order has
22 been issued, but only if the construction or repair of the
23 vessel was carried out in a foreign country which—

24 “(1) is not a signatory to a trade agreement
25 with the United States that provides for the imme-

1 diate elimination of the dumping of vessels and the
2 subsidizing of vessel construction or repair; or

3 “(2) is a signatory to a trade agreement de-
4 scribed in paragraph (1) but was not, as determined
5 by the Secretary, in compliance with its obligations
6 under the trade agreement during the construction
7 or repair.

8 “(c) APPLICATION OF SUBTITLES A AND B.—

9 “(1) IN GENERAL.—In applying subtitles A and
10 B with respect to vessels constructed, reconstructed,
11 or repaired in foreign countries—

12 “(A) a vessel shall be treated as sold for
13 importation into the United States when a
14 United States person enters into a contract
15 for—

16 “(i) the construction or reconstruction
17 of the vessel by, or the purchase (or leas-
18 ing, if the equivalent of a purchase) of the
19 vessel after construction or reconstruction
20 from, the builder; or

21 “(ii) the repair of the vessel; and

22 “(B) a vessel sold for importation into the
23 United States shall be treated as being offered
24 for entry for consumption under the tariff laws
25 at the time of its first arrival at a port or place

1 in the United States after construction, recon-
2 struction, or repair, regardless of where the ves-
3 sel is registered or documented.

4 “(2) DEFINITION.—For purposes of paragraph
5 (1), the term ‘United States person’ means—

6 “(A) any individual or entity described in
7 subsection (a) of section 12102 of title 46,
8 United States Code;

9 “(B) any agent or other person acting on
10 behalf of any individual or entity referred to in
11 subparagraph (A); or

12 “(C) any person directly or indirectly
13 owned or controlled by any individual or entity
14 referred to in subparagraph (A).”.

15 (b) APPLICABILITY OF AMENDMENT.—The amend-
16 ment made by subsection (a) applies to a vessel—

17 (1) constructed, reconstructed, or repaired
18 under a contract entered into after the date of en-
19 actment of this Act; or

20 (2) a contract for the construction, reconstruc-
21 tion, or repair of which was entered into on or be-
22 fore the date of the enactment of this Act if such
23 construction, reconstruction, or repair is not com-
24 pleted within 30 months after such date.

1 **TITLE II—FAIR TRADE FOR THE**
2 **UNITED STATES SHIPBUILD-**
3 **ING AND REPAIR INDUSTRY**

4 **SECTION 201. SHORT TITLE.**

5 This title may be cited as the “Shipbuilding Trade
6 Reform Act of 1993”.

7 **SEC. 202. CONGRESSIONAL FINDINGS.**

8 (a) FINDINGS.—The Congress finds that—

9 (1) in 1981, the United States Government ter-
10 minated funding for the construction differential
11 subsidy program, thereby ending direct subsidization
12 of commercial shipbuilding in the United States;

13 (2) since 1981, the international market for
14 ship construction has been distorted by a wide array
15 of subsidies and other anticompetitive practices by
16 foreign countries, including but not limited to, the
17 member countries of Working Party 6 of the Organi-
18 zation for Economic Cooperation and Development;

19 (3) such subsidies and anticompetitive practices
20 include, but are not limited to, direct grants, pref-
21 erential financing, equity infusions, research and de-
22 velopment assistance, restructuring aid, special tax
23 concessions, debt forgiveness, and other forms of di-
24 rect and indirect assistance;

1 (4) foreign countries that directly or indirectly
2 provide subsidies or other forms of anticompetitive
3 assistance for the construction or repair of vessels
4 are engaging in unjustifiable, unreasonable and dis-
5 criminatory trade practices which—

6 (A) burden and restrict United States
7 commerce,

8 (B) materially injure the United States
9 ship construction and repair industry, and

10 (C) create general or special conditions un-
11 favorable to the ability of United States ship-
12 builders to engage in the construction of vessels
13 for international commerce;

14 (5) foreign shipbuilding subsidies have caused,
15 and threaten to cause, material injury to the United
16 States shipbuilding and ship repair industry, as evi-
17 denced by—

18 (A) the closure of more than 40 major
19 shipyards and the loss of over 120,000 jobs in
20 shipyards and their supplier base since 1981,

21 (B) the potential loss of another 180,000
22 jobs by 1998 if foreign subsidies are not elimi-
23 nated,

24 (C) the decline in the United States share
25 of the international commercial vessel construc-

1 tion market from 7.9 percent in 1979 to less
2 than 1 percent in 1991,

3 (D) the sharp drop in the number of
4 oceangoing commercial vessels on order or
5 under construction in United States shipyards
6 from 70 vessels in 1979 to 1 vessel in 1991,

7 (E) the substantial reduction in shipyard
8 profitability and the industry's difficulty in rais-
9 ing capital,

10 (F) the dramatic decline in the capacity
11 utilization of United States shipyards and the
12 lost opportunities for technological advance-
13 ment; and

14 (G) the significant price underselling by
15 foreign shipyards;

16 (6) existing United States trade laws and trade
17 agreements provide limited redress to domestic pro-
18 ducers of ships for the trade-distorting subsidies and
19 dumping practices of foreign shipbuilders;

20 (7) a strong, effective multilateral agreement
21 among shipbuilding nations to eliminate trade-dis-
22 torting practices in the ship construction industry is
23 the best means of providing for fair international
24 competition, however, absent such an agreement,
25 greater redress under United States law against un-

1 fair and unreasonable foreign trade practices in
2 commercial ship construction is necessary;

3 (8) a viable United States ship construction, re-
4 pair and supplier industry is necessary to achieve
5 the national defense and economic security interests
6 of the United States; and

7 (9) United States shipyards, which have become
8 almost exclusive defense contractors, are positioning
9 themselves to make those investments in commercial
10 facilities, ship designs, manufacturing process, and
11 structural reorganization that are necessary for their
12 conversion to compete in the international commer-
13 cial ship construction and repair market and thereby
14 ensure a viable United States industry which can re-
15 spond to the Nation's future national security re-
16 quirements; however, this conversion to the commer-
17 cial market cannot be achieved unless the massive
18 subsidies provided by foreign governments for the
19 construction and repair of commercial ships are
20 eliminated.

21 (b) PURPOSE.—It is the purpose of this title to en-
22 sure fair trade in the commercial shipbuilding and repair
23 industry by providing for additional trade remedies
24 against unfair foreign competition, particularly with re-
25 gard to those situations that cannot be dealt with effec-

1 tively under the antidumping and countervailing duty
2 laws.

3 **SEC. 203. LISTING OF SUBSIDIZING COUNTRIES.**

4 (a) ESTABLISHMENT OF LIST.—The Secretary shall
5 establish and maintain a list containing the name of each
6 foreign country that provides, after the date of the enact-
7 ment of this Act, directly or indirectly, any subsidy for
8 the construction or repair of vessels. The Secretary shall
9 publish the list in the Federal Register on at least a bian-
10 nual basis.

11 (b) STATUTORY LISTINGS.—

12 (1) IN GENERAL.—Unless the Secretary deter-
13 mines, with clear and convincing evidence, that a
14 foreign country that was a party to negotiating a
15 multilateral agreement for the elimination of ship-
16 building subsidies in the Organization for Economic
17 Cooperation and Development Working Party 6 on
18 October 16, 1991, does not provide, directly or indi-
19 rectly, any vessel construction or repair subsidy, the
20 Secretary shall, on the date of the enactment of this
21 Act—

22 (A) place the foreign country on the list;

23 (B) notify the foreign country of its inclu-
24 sion on the list; and

1 (C) publish notice of the listing in the Fed-
2 eral Register.

3 (2) DURATION OF LISTING.—Each foreign
4 country listed under subsection (a) as a result of
5 this paragraph shall remain on the list until such
6 time as the foreign country signs a trade agreement
7 with the United States that provides for the imme-
8 diate elimination of subsidies for the construction
9 and repair of vessels (including the elimination of
10 continuing benefits from prior subsidy programs).

11 (c) LISTINGS AFTER INVESTIGATIONS.—

12 (1) INITIATION OF INVESTIGATIONS.—

13 (A) INITIAL INVESTIGATION.—On the date
14 of the enactment of this Act, the Secretary shall
15 initiate an initial investigation into the practices
16 of foreign countries that provide, directly or in-
17 directly, subsidies for the construction or repair
18 of vessels in such countries. The investigation
19 required under this subparagraph shall be con-
20 cerned with those foreign countries, other than
21 those required to be listed under subsection (b),
22 which the Secretary has reasonable cause to be-
23 lieve provide, directly or indirectly, any subsidy
24 for the construction or repair of vessels.

1 (B) SUBSEQUENT INVESTIGATIONS.—If at
2 any time after the date of the enactment of this
3 Act, the Secretary receives—

4 (i) new information; or

5 (ii) a petition for an investigation
6 from an interested party that specifically
7 alleges the existence of one or more sub-
8 sidy practices and contains information
9 reasonably available to the petitioner sup-
10 porting such allegation;

11 the Secretary shall, within 20 days after the
12 date of receipt, initiate an investigation into the
13 subsidy practices of the foreign country if the
14 Secretary has reasonable cause, on the basis of
15 such information or petition, to believe that the
16 foreign country is providing, directly or indi-
17 rectly, any subsidy for the construction or re-
18 pair of vessels in that country.

19 (2) ADMINISTRATIVE PROCEDURE FOR INVES-
20 TIGATIONS; PRELIMINARY DETERMINATIONS.—

21 (A) NOTICE.—Within 7 days after initiat-
22 ing an investigation under paragraph (1)(A) or
23 (B), the Secretary shall publish in the Federal
24 Register a notice of such investigation together
25 with a request for public comments.

1 (B) PUBLIC COMMENTS.—The Secretary
2 shall—

3 (i) receive public comments during the
4 30-day period following the day on which
5 notice is published under subparagraph
6 (A); and

7 (ii) subject to section 206(a), make
8 such comments available to the general
9 public upon request.

10 (C) PRELIMINARY DETERMINATION.—
11 Within 30 days after the close of the public
12 comment period referred to in subparagraph
13 (B), the Secretary, on the basis of the evidence
14 contained in the record, shall make a prelimi-
15 nary determination regarding whether the for-
16 eign country provides, directly or indirectly, any
17 subsidy for the construction or repair of vessels.

18 (D) NOTICE OF PRELIMINARY DETERMINA-
19 TION.—Within 7 days after the day on which a
20 preliminary determination is made under sub-
21 paragraph (C), the Secretary shall publish in
22 the Federal Register a notice of the preliminary
23 determination together with—

24 (i) an explanation of the determina-
25 tion, including the nature and extent of

1 any subsidy identified as the basis for the
2 preliminary determination; and

3 (ii) a request for public comment re-
4 garding the preliminary determination.

5 (E) PUBLIC COMMENTS ON PRELIMINARY
6 DETERMINATION.—The Secretary shall—

7 (i) receive public comments during the
8 30-day period following the day on which
9 notice is published under subparagraph
10 (D); and

11 (ii) subject to section 206(a), make
12 such comments available to the general
13 public upon request.

14 (d) FINAL DETERMINATION.—

15 (1) IN GENERAL.—Within—

16 (A) 30 days after the close of the public
17 comment period referred to in subsection
18 (c)(2)(E)(i), in case of an investigation initiated
19 under subsection (c)(1)(A) or (B); or

20 (B) 30 days after the completion of an in-
21 vestigation regarding an emergency listing
22 under subsection (e);

23 the Secretary shall make a final determination re-
24 garding whether a foreign country provides, directly
25 or indirectly, any subsidy for the construction or re-

1 pair of vessels. Any determination made by the Sec-
2 retary under this subsection shall be based solely
3 upon evidence contained in the record, including that
4 information which is otherwise treated as propri-
5 etary under 206(a).

6 (2) NOTIFICATION AND PUBLICATION OF LIST-
7 ING.—If the Secretary determines under paragraph
8 (1) that a foreign country provides, directly or indi-
9 rectly, any subsidy for the construction or repair of
10 vessels, the Secretary shall, within 7 days after the
11 date of the determination—

12 (A) place the foreign country on the list;

13 (B) notify the foreign country of its inclu-
14 sion on the list; and

15 (C) publish in the Federal Register a no-
16 tice of the determination and listing together
17 with a full explanation of the determination, in-
18 cluding the nature and extent of any subsidy
19 identified as the basis for the determination.

20 (e) EMERGENCY LISTING.—If at any time the Sec-
21 retary determines that compelling prima facie evidence
22 has been provided by any interested party indicating that
23 a foreign country is providing any subsidy for the con-
24 struction or repair of vessels, the Secretary shall, within
25 7 days after receiving such evidence, place that country

1 on the list. Within 7 days after making an emergency list-
2 ing under this subsection, the Secretary shall—

3 (1) notify the affected foreign country thereof;

4 (2) publish in the Federal Register a notice of
5 the determination and the emergency listing, to-
6 gether with a request for public comment and a
7 schedule for an investigation into the alleged sub-
8 sidy; and

9 (3) initiate an investigation into the alleged
10 subsidy.

11 An investigation initiated under paragraph (3) shall be
12 concluded by the Secretary within 60 days after the day
13 of initiation. Upon completion of the investigation, the
14 Secretary shall make a final determination under sub-
15 section (d).

16 (f) RECONSIDERATION AND REMOVAL OF LIST-
17 INGS.—

18 (1) RECONSIDERATION.—The Secretary may
19 reconsider a final determination under subsection
20 (d)—

21 (A) after receiving an application for re-
22 consideration from the foreign country listed
23 under subsection (a) as a result of that deter-
24 mination, if the application alleges changed cir-
25 cumstances concerning the elimination by the

1 foreign country of its subsidy practices and the
2 Secretary considers the allegations sufficient to
3 warrant a reconsideration; or

4 (B) if the Secretary receives information
5 concerning the signing of an agreement between
6 the United States Government and that foreign
7 country that provides for the immediate elimi-
8 nation by that country of construction and re-
9 pair subsidies for vessels.

10 (2) RESTRICTION ON RECONSIDERATION.—A
11 foreign country may not make more than one appli-
12 cation for reconsideration under this subsection in
13 any calendar year.

14 (3) BURDEN OF PERSUASION.—In any recon-
15 sideration under paragraph (1)(A), the burden of
16 persuasion regarding whether there are changed cir-
17 cumstances sufficient to warrant a determination
18 that the foreign country should be removed from the
19 list is on the applicant.

20 (4) REMOVAL FROM LIST.—The Secretary may
21 remove a foreign country from the list only if the
22 Secretary determines—

23 (A) based solely on the evidence contained
24 in the public record, including that information
25 which is otherwise treated as proprietary under

1 section 206(a), that the foreign country does
2 not provide any subsidy, directly or indirectly,
3 for the construction or repair of vessels (includ-
4 ing any continuing benefit from any prior sub-
5 sidy program); or

6 (B) that there is a signed agreement be-
7 tween the United States Government and the
8 foreign country that provides for the immediate
9 elimination of subsidies for the construction and
10 repair of vessels.

11 (5) ADMINISTRATIVE PROCEDURES FOR RECON-
12 sideration.—

13 (A) NOTICE AND COMMENT.—After receiv-
14 ing an application for reconsideration under
15 paragraph (4) from a foreign country, the Sec-
16 retary shall—

17 (i) within 7 days publish in the Fed-
18 eral Register the text of the application to-
19 gether with a request for public comments;
20 and

21 (ii) receive comments from the public
22 for a period of 60 days after the date of
23 publication and, subject to section 206(a),
24 make such comments available to the gen-
25 eral public upon request.

1 (B) REVIEW AND DETERMINATION.—With-
2 in 90 days after receiving an application for re-
3 consideration under paragraph (4), the Sec-
4 retary shall—

5 (i) review the comments received
6 under subparagraph (A) and issue a final
7 affirmative or negative determination re-
8 garding the removal of the foreign country
9 from the list; and

10 (ii) publish notice in the Federal Reg-
11 ister of the determination together with a
12 full explanation thereof.

13 (g) JUDICIAL REVIEW.—

14 (1) REVIEW OF DETERMINATION.—Within 30
15 days after the date of publication in the Federal
16 Register of a final determination of the Secretary
17 made under subsection (d)(1) or (f)(5)(B), any per-
18 son who is a party to the proceeding in connection
19 with which the matter arises may commence an ac-
20 tion in the United States Court of International
21 Trade by filing concurrently a summons and com-
22 plaint, each with the content and in the form, man-
23 ner, and style prescribed by the rules of that court,
24 contesting any factual findings or legal conclusions
25 upon which the determination is based.

1 (2) PROCEDURES AND FEES.—The procedures
2 and fees set forth in chapter 169 of title 28, United
3 States Code, apply to an action under this sub-
4 section.

5 (3) STANDARD OF REVIEW.—The court shall
6 hold unlawful any determination, finding, or conclu-
7 sion found to be unsupported by substantial evidence
8 on the record, or otherwise not in accordance with
9 law.

10 (4) RECORD FOR REVIEW.—The record for re-
11 view shall consist of a copy of all information pre-
12 sented to or obtained by the Secretary during the
13 course of the administrative proceeding, including all
14 governmental memoranda pertaining to the case and
15 the record of ex parte meetings, as well as a copy
16 of the determination, all transcripts or records of
17 conferences and hearings, and all notices published
18 in the Federal Register.

19 (5) STANDING.—Any person who was a party
20 to the administrative proceedings described in this
21 section shall have the right to appear and be heard
22 as a party in interest before the United States Court
23 of International Trade. The party filing the action
24 shall notify all such persons of the filing of an action

1 under this section, in the form, manner, and within
2 the time prescribed by the rules of the court.

3 (6) CONFORMING AMENDMENT.—Section 1581
4 of title 28, United States Code, is amended by add-
5 ing the following subsection:

6 “(k) The Court of International Trade shall have ex-
7 clusive jurisdiction of any civil action commenced under
8 section 203(g) of the Shipbuilding Trade Reform Act of
9 1993.”.

10 **SEC. 204. PENALTIES.**

11 (a) PENALTY FOR FALSE INFORMATION AND RE-
12 NEWAL OF SUBSIDIES.—

13 (1) IN GENERAL.—The Secretary shall place a
14 foreign country on the list for a period of not less
15 than 5 years if the Secretary—

16 (A) determines that a foreign country pro-
17 vided the Secretary with false or misleading in-
18 formation during any investigation or reconsid-
19 eration under section 203; or

20 (B) after making a final determination
21 under section 203(d) or (f) that the foreign
22 country is not providing a subsidy, determines
23 that the foreign country provides, directly or in-
24 directly, any new construction or repair subsidy

1 (including the reinstatement of any benefit
2 under any prior subsidy program).

3 A listing required by this subsection shall be made
4 within 30 days after the date of the determination
5 under paragraph (1) or (2).

6 (2) TIME LIMITS FOR DETERMINATIONS.—The
7 Secretary shall make a determination under sub-
8 paragraph (A) or (B) of paragraph (1) within 30
9 days after the day on which the Secretary receives
10 information indicating that a violation of the sub-
11 paragraph has likely occurred.

12 (b) PENALTIES FOR FAILURE TO ELIMINATE SUB-
13 SIDIES.—

14 (1) PRECONDITION FOR IMPOSITION OF PEN-
15 ALTIES.—Actions by the Secretary under paragraphs
16 (2), (3), and (4) may be taken only if the Secretary
17 determines that the foreign country concerned has
18 been notified of its inclusion on the list and has
19 failed within 180 days after that notification to
20 enter into any agreement with the United States
21 that provides for the immediate elimination of sub-
22 sidies for the construction and repair of vessels.

23 (2) PENALTIES FOR NEW AFFECTED VES-
24 SELS.—Subject to paragraph (1) and subsection (c),

1 the Secretary shall take one or more of the following
2 actions with respect to any new affected vessel:

3 (A) Limit the sailings of the vessel to or
4 from the United States, or the amount of cargo
5 carried, by the vessel to not less than 50 per-
6 cent of the number of sailings, or the amount
7 of cargo carried, by the vessel during the imme-
8 diately preceding full calendar year.

9 (B) Impose on the vessel a fee not less
10 than \$500,000 and not more than \$1,000,000
11 per voyage.

12 (C) Direct the appropriate customs officer
13 at any port or place of destination in the Unit-
14 ed States to refuse the clearance required by
15 section 4197 of the Revised Statutes of the
16 United States to the vessel.

17 (D) Direct the Secretary of the department
18 in which the Coast Guard is operating to deny
19 entry for purpose of oceanborne trade of the
20 vessel to any port or place in the United States
21 or the navigable waters of the United States.

22 (3) PENALTIES FOR EXISTING AFFECTED VES-
23 SELS.—Subject to paragraph (1) and subsection (c),
24 if the Secretary finds the existence of conditions un-
25 favorable to the ability of any United States ship-

1 builder to engage in the construction or repair of
2 vessels for international commerce which arise out
3 of, or result from, a subsidy provided by a foreign
4 country on the list established under subsection (a),
5 the Secretary shall take either or both of the actions
6 described in subparagraphs (A) and (B) of para-
7 graph (2) with respect to an existing affected vessel
8 of that country.

9 (4) CARGO DIVERSION.—Subject to paragraph
10 (1) and subsection (c), the Secretary shall direct the
11 appropriate customs officer to deny entry of cargo
12 into the United States that has been transported on
13 an affected vessel if that cargo has been transported
14 to a port or place in the United States through a
15 foreign port or place in a country contiguous to the
16 United States.

17 (5) DEFINITIONS.—As used in this subsection:

18 (A) The term “affected vessel” means a
19 vessel—

20 (i) that is documented under the laws
21 of a foreign country that is on the list; or

22 (ii) the controlling interest in which is
23 held by a citizen or national of, or a legal
24 entity existing under the laws of, a foreign
25 country that is on the list, regardless of

1 whether the vessel is documented under
2 the laws of that country.

3 (B) The term “existing affected vessel”
4 means an affected vessel that is not a new af-
5 fected vessel.

6 (C) The term “new affected vessel” means
7 an affected vessel that was constructed after
8 the date of the enactment of this Act, unless
9 such construction was completed within 30
10 months after such date of enactment under a
11 contract entered into before such date of enact-
12 ment.

13 (c) IMPOSITION AND DURATION OF PENALTIES IM-
14 POSED UNDER THIS SECTION.—No penalty may be im-
15 posed under this section before 120 days after the date
16 of the enactment of this Act. Any penalty imposed under
17 subsection (b)(2), (3), or (4) shall remain in effect until
18 such time as the foreign country is removed from the list
19 under section 203(f).

20 **SEC. 205. TRADE AGREEMENTS.**

21 (a) IN GENERAL.—Any negotiation to which the
22 United States is a party for the elimination of subsidies
23 for the construction or repair of vessels by foreign coun-
24 tries shall be conducted by the United States Government

1 in full consultation with the affected industries in the
2 United States.

3 (b) MONITORING.—The Secretary shall monitor the
4 compliance of each foreign country with any agreement
5 to which the United States and such country are parties
6 for the elimination of subsidies for the construction or re-
7 pair of vessels. The Secretary shall publish annually in the
8 Federal Register the findings made by the Secretary under
9 this subsection together with a request for public com-
10 ments.

11 (c) PENALTY FOR NONCOMPLIANCE.—If, based on
12 the findings made and the public comments received under
13 subsection (b), the Secretary determines (within 90 days
14 after the day of publication of the findings under sub-
15 section (b)) that a foreign country is not in compliance
16 with the agreement, the Secretary shall, within 7 days
17 after making such determination, place such foreign coun-
18 try on the list and impose penalties under paragraph (2),
19 (3), or (4) of section 204(b) with respect to such country
20 (and for purposes of applying any such penalty, paragraph
21 (1) of section 204(b) shall be disregarded).

22 **SEC. 206. GENERAL ADMINISTRATIVE PROVISIONS.**

23 (a) PROPRIETARY INFORMATION.—The procedures
24 set forth in section 777 of the Tariff Act of 1930 shall
25 govern the rights of access to information obtained by the

1 Secretary during the course of any investigation conducted
2 under section 203.

3 (b) INFORMATION USED IN MAKING DETERMINA-
4 TIONS.—The Secretary shall, before making any final de-
5 termination under section 203, 204, or 205 verify all in-
6 formation that will be relied upon in making that deter-
7 mination. If the Secretary is unable to verify any informa-
8 tion submitted, the Secretary shall use the best informa-
9 tion available as the basis for action. Whenever a party
10 refuses or is unable to produce the information requested
11 in a timely manner and in the form provided, the Sec-
12 retary shall use the best information otherwise available.
13 All information presented to or obtained by the Secretary
14 shall be part of the record of the proceeding.

15 (c) PUBLIC AVAILABILITY OF DETERMINATIONS.—
16 The Secretary shall make available for public inspection
17 the text of all determinations made under section 203,
18 204, or 205.

19 **SEC. 207. DEFINITIONS.**

20 (a) DEFINITIONS.—As used in this title:

21 (1) The term “conditions unfavorable to the
22 ability of any United States shipbuilder to engage in
23 the construction or repair of vessels for international
24 commerce” includes, but is not limited to, any condi-
25 tions available to, and favorable for, foreign ship-

1 builders which are not reciprocally available to and
2 favorable for United States shipbuilders and
3 which—

4 (A) provide any disincentive to investment
5 in United States ship construction or repair fa-
6 cilities, equipment, and technology;

7 (B) contribute to any reduction in the
8 competitiveness of any United States ship-
9 builder to engage in the construction or repair
10 of vessels for international commerce; or

11 (C) otherwise contribute to any distortion
12 of the international market for ship construc-
13 tion or repair.

14 (2) The term “construction” includes recon-
15 struction.

16 (3) The term “interested party” means—

17 (i) a person that engages in ship construc-
18 tion or repair in the United States;

19 (ii) a certified union or recognized union or
20 group of workers which is representative of an
21 industry that engages in ship construction or
22 repair in the United States;

23 (iii) a trade or business association whose
24 members include firms, partnerships, or other

1 entities that engage in ship construction or re-
2 pair in the United States; and

3 (iv) an association, a majority of whose
4 members is composed of interested parties de-
5 scribed in clauses (i), (ii), and (iii) with respect
6 to ship construction.

7 (4) The term “foreign shipyard” includes a ship
8 construction or repair facility located in a foreign
9 country that is directly or indirectly owned, con-
10 trolled, managed, or financed by a foreign shipyard
11 that receives or benefits from a subsidy.

12 (5) The term “list” means the list established
13 under section 203(a).

14 (6) The term “Secretary” means the Secretary
15 of Commerce.

16 (7) The term “subsidy” includes, but is not lim-
17 ited to, any of the following:

18 (A) Officially supported export credits and
19 development assistance.

20 (B) Direct official operating support to the
21 commercial shipbuilding and repair industry, or
22 to a related entity that favors the operation of
23 shipbuilding and repair, including—

24 (i) grants;

1 (ii) loans and loan guarantees other
2 than those available on the commercial
3 market;

4 (iii) forgiveness of debt;

5 (iv) equity infusions on terms incon-
6 sistent with commercially reasonable in-
7 vestment practices;

8 (v) preferential provision of goods and
9 services; and

10 (vi) public sector ownership of com-
11 mercial shipyards on terms inconsistent
12 with commercially reasonable investment
13 practices.

14 (C) Direct official support for investment
15 in the commercial shipbuilding and repair in-
16 dustry, or to a related entity that favors the op-
17 eration of shipbuilding and repair, including the
18 kinds of support listed in clauses (i) through (v)
19 of subparagraph (B), and any restructuring
20 support, except public support for social pur-
21 poses directly and effectively linked to shipyard
22 closures.

23 (D) Assistance in the form of grants, pref-
24 erential loans, preferential tax treatment, or
25 otherwise, that benefits or is directly related to

1 shipbuilding and repair for purposes of research
2 and development that is not equally open to do-
3 mestic and foreign enterprises.

4 (E) Tax policies and practices that favor
5 the shipbuilding and repair industry, directly or
6 indirectly, such as tax credits, deductions, ex-
7 emptions and preferences, including accelerated
8 depreciation, if the benefits are not generally
9 available to persons or firms not engaged in
10 shipbuilding or repair.

11 (F) Any official regulation or practice that
12 authorizes or encourages persons or firms en-
13 gaged in shipbuilding or repair to enter into
14 anticompetitive arrangements.

15 (G) Any indirect support directly related,
16 in law or in fact, to shipbuilding and repair at
17 national yards, including any public assistance
18 favoring shipowners with an indirect effect on
19 shipbuilding or repair activities, and any assist-
20 ance provided to suppliers of significant inputs
21 to shipbuilding, which results in benefits to do-
22 mestic shipbuilders.

23 (H) Any export subsidy identified in the Il-
24 lustrative List of Export Subsidies in the Annex
25 to the Agreement on Interpretation and Appli-

1 cation of Articles VI, XVI, and XXIII of the
2 General Agreement on Tariffs and Trade or
3 any other export subsidy that may be prohibited
4 as a result of the Uruguay Round of trade ne-
5 gotiations.

6 (8) The term “vessel” means any self-propelled,
7 seagoing vessel—

8 (A) of not less than one hundred gross
9 tons, as measured under the International Con-
10 vention of Tonnage Measurement of Ships,
11 1969; and

12 (B) not exempt from entry under section
13 441 of the Tariff Act of 1930.

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